

EZEKIEL DAVIS,

Plaintiff,

v.

CORECIVIC, INC, et al.,

Defendants.

No. CIV 17-293-RAW-SPS

Plaintiff has filed a “motion to show cause why Defendants Brittney Summers-Hope, Joe M. Allbaugh, Latoya Edwards and Justin Pham and Andrea Skelton.” (Dkt. 230), which the Court construes as a response to the Court’s Orders entered on July 2, 2019. (Dkts. 226, 227). He complains that when he was transferred from Davis Correctional Facility (DCF) to Oklahoma State Penitentiary, his legal documents arrived later, and he was only allowed one square foot of legal property pursuant to DOC policy. He also claims he has not received all the documents he needs to show cause for his failure to properly serve the above-named defendants, and the defendants have been uncooperative in providing their last known addresses. Plaintiff also has filed a motion for production of documents and tangible things, asking in part for production of the last known addresses of the above-named defendants. (Dkt. 234).

The record shows that on April 22, 2019, the summons for Defendant Justin Pham was returned unexecuted because Pham was an “unknown employee.” (Dkt. 209). The Court

notes that Plaintiff has filed another civil rights action in this Court in Case No. CIV-18-396-RAW-KEW, and he named Justin Pham and Latoya Edwards as defendants in that case. In response to an Order entered on March 11, 2020, in Case No. CIV-18-396-RAW-KEW, Defendant CoreCivic advised the Court on March 16, 2020, that Defendant Justin Pham was not employed by CoreCivic and was not an employee at DCF.

Service of the summons for Defendant Latoya Edwards, a.k.a. Latreena Edwards, was attempted at an address provided by the United States Marshals Service on October 11, 2019. The USM-285 Form was returned unexecuted with the notation, “Subject no longer resides at provided address. Occupant has no idea of subject identity.” (Dkt. 246).

Because the Marshals Service has not been able to locate and serve Defendants Justin Pham and Latoya Edwards, a.k.a. Latreena Edwards, these two defendants are DISMISSED WITHOUT PREJUDICE from this action pursuant to Fed. R. Civ. P. 4.

Defendant Brittney Summers-Hope

In an Order entered on April 3, 2020, the Court noted that Brittney Summers-Hope had not been served with the amended complaint at her last known address. (Dkt. 259). Plaintiff has been sent another USM-285 Form for Ms. Summers-Hope, with directions to complete and return it to the Court Clerk’s Office. *Id.* Upon receipt of the completed, returned form, the Court will direct the United States Marshals Service to attempt service of the amended complaint.

Defendant Joe M. Allbaugh

On April 8, 2019, Former DOC Director Joe M. Allbaugh's unexecuted USM-285 Form was returned unexecuted because he never was employed at DCF. (Dkt. 200). Allbaugh's address on the form erroneously was listed as the address for DCF. *Id.*

To attempt to obtain the proper address for Defendant Allbaugh, the Court has directed the Marshals Service to contact the DOC and to send the results to the Court. (Dkt. 260). On April 3, 2020, the Court Clerk was directed to send Plaintiff a USM-285 Form for Defendant Allbaugh. (Dkt. 261). Plaintiff was directed to complete and return the form. Upon receipt of the completed form, the Court will direct the United States Marshals Service to attempt service of the amended complaint.

Defendant Dr. Andrea Skelton

Defendant Dr. Andrea Skelton has filed a motion to dismiss, alleging among other things, that she has not been properly served with the amended complaint pursuant to Fed. R. Civ. P. 4. (Dkt. 190). To properly serve an individual within the United States, a copy of the summons and complaint may be delivered to the individual defendant personally; a copy may be left at the individual's residence; or a copy may be delivered to an agent authorized to accept such service. Fed. R. Civ. P. 4(e)(2). The Rule also provides that service may occur pursuant to the law of the state where service is made. Fed. R. Civ. P. 4(e)(1). Oklahoma law allows service by mail, to be accomplished "by mailing a copy of the summons and petition by certified mail, return receipt requested and delivery restricted to the

addressee.” Okla. Stat. tit. 12, § 2004(C)(2)(b).

The record shows the Court issued an alias summons to Defendant Skelton on June 28, 2018. (Dkt. 99). The summons was addressed to “Andrea Akelton” [sic] and was sent by the United States Marshals Service via certified mail to Defendant Skelton in care of “Locum Tenes” [sic]. *Id.* at 1. Defendant Skelton asserts that Locum Tenens is a staffing agency that assisted in placing her with CoreCivic and DCF. The Postal Service Form 3811 (green card) was signed by “Jermaine,” and the Proof of Service, dated July 9, 2018, indicates Defendant Skelton was served by certified U.S. Mail. (Dkt. 107 at 3-4).

Defendant Skelton alleges she was not personally served with a copy of the summons and complaint, nor was a copy left at her residence or with an authorized service agent. Instead, a copy was sent by certified mail to a staffing agency which was not authorized to accept service on her behalf.

Based on this record, the Court finds Defendant Skelton was not properly served in accordance with the Federal Rules of Civil Procedure. Therefore, Defendant Skelton’s motion to dismiss for failure to properly serve her (Dkt. 190) is GRANTED, and she is DISMISSED WITHOUT PREJUDICE from this action.

Motion for Production of Documents and Tangible Things

Plaintiff has filed a motion for production of documents and tangible things. (Dkt. 234). He is requesting the production of documents concerning the last known addresses for the defendants, as well as copies of a certain memorandum, Plaintiff’s medical records,

certain camera footage, certain incident reports, his cell assignments, a protective custody measure, and all incident reports concerning cell assignments.

The Court finds the motion is moot with respect to the last known addresses for the defendants, because that information has been addressed in this Opinion and Order. To the extent Plaintiff is requesting particular documents and camera footage, the Court previously has advised him that pursuant to Local Civil Rule 26.1, discovery material is not to be filed with the Court. (Dkt. 88). He must follow the Federal Rules of Civil Procedure and the corresponding Local Civil Rules with respect to discovery issues. This motion is DENIED.

ACCORDINGLY,

1. Plaintiff's motion to show cause why Defendants Brittney Summers-Hope, Joe M. Allbaugh, Latoya Edwards, Justin Pham, and Andrea Skelton (Dkt. 230) is construed as a response to the Court's Orders entered on July 2, 2019 (Dkts. 226, 227).
2. Defendant Justin Pham and Defendant Latoya Edwards, a.k.a. Latreena Edwards, are DISMISSED WITHOUT PREJUDICE from this action.
3. Upon Plaintiff's return of completed USM-285 Forms for Defendants Brittney Summers-Hope and Joe M. Allbaugh, the Court will direct the U.S. Marshals Service to attempt service of these defendants. **Any documents containing the last known address of Defendant Brittney Summers-Hope or Defendant Joe M. Allbaugh shall be filed under seal.**

4. Defendant Skelton's motion to dismiss (Dkt. 190) is GRANTED, and she is DISMISSED WITHOUT PREJUDICE from this action.
5. Plaintiff's motion for production of documents and tangible things (Dkt. 234) is DENIED.

IT IS SO ORDERED this 8th day of April 2020.

A handwritten signature in black ink, reading "Ronald A. White", written over a horizontal line.

Ronald A. White
United States District Judge
Eastern District of Oklahoma